

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES LYNN HINES,
ADC # 197067; CDCR #K-86989;

Civil No. 08-0174 BTM (RBB)

VS

KENNETH S. COUNTRYMAN, et al.,

Defendants.

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEE**

Plaintiff, a former California inmate currently incarcerated at the Arizona State Prison Complex in Florence, Arizona, and proceeding pro se, has filed a civil rights Complaint.

I. Failure to Pay Filing Fee or Request IFP Status

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

Here, Plaintiff has neither prepaid the \$350 filing fee required to commence this action, nor has he submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate dismissal pursuant to 28 U.S.C. § 1914(a).

Moreover, even if Plaintiff were to file a Motion to Proceed *IFP* he would be barred from

1 doing so. A court “may take notice of proceedings in other courts, both within and without the
 2 federal judicial system, if those proceedings have a direct relation to matters at issue.” *United*
 3 *States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.
 4 1992); *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169, 1172 (10th Cir. 1979). Here, the
 5 Court takes judicial notice that Plaintiff has had more than three prior prisoner civil actions
 6 dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon
 7 which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A. *See Hines v. City*
 8 *of San Diego Police Dep’t*, Civil Case No. 00-0969 K (LAB) (S.D. Cal. June 21, 1999) (Order
 9 dismissing complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(b)(ii) &
 10 1915A(b)(1)) (strike one); *Malloy v. Kowolski*, Civil Case No. 00-1186 W (LAB) (S.D. Cal.
 11 June 30, 2000) (Order dismissing complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B))
 12 (strike two); *Hines v. Hissong*, Civil Case No. 00-1177 JM (NLS) (S.D. Cal. July 14, 2000)
 13 (Order dismissing complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)) (strike three);
 14 *Malloy v. Corcoran Prison*, Civil Case No. 00-5660 REC (DLB) (E.D. Cal. Sept. 25, 2000)
 15 (Order dismissing complaint as frivolous) (strike four); *Hines v. Jaffe*, Civil Case No. 00-2078
 16 W (CGA) (S.D. Cal. Nov. 7, 2000) (Order dismissing complaint as frivolous) (strike five);
 17 *Malloy v. Galaza*, Civil Case No. 00-5647 AWI (HGB) (E.D. Cal. Dec. 13, 2000) (Order
 18 dismissing action for failing to state a claim) (strike six); and *Malloy v. Corcoran Prison*, Civil
 19 Case No. 99-6647 REC (SMS) (E.D. Cal. Dec. 15, 2000) (Order dismissing complaint as
 20 frivolous and for failing to state a claim) (strike seven).

21 Accordingly, because Plaintiff has, while incarcerated, accumulated more than three
 22 “strikes” pursuant to § 1915(g), he is not entitled to the privilege of proceeding IFP in this
 23 action. *See Andrews v. Cervantes*, 493 F.3d at 1055; *Rodriguez*, 169 F.3d at 1180 (finding that
 24 28 U.S.C. § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes
 25 prisoners with a history of abusing the legal system from continuing to abuse it while enjoying
 26 IFP status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (“[C]ourt
 27 permission to proceed IFP is itself a matter of privilege and not right.”).

28 **II. Conclusion and Order**

1 For the reasons set forth above, the Court hereby:

2 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
3 filing fee; and

4 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is “Filed”
5 to prepay the entire \$350 civil filing fee in full.

6 **IT IS FURTHER ORDERED** that the if Plaintiff fails to either prepay the \$350 civil
7 filing fee within that time, this action shall remain dismissed without prejudice and without
8 further Order of the Court.

9 **IT IS SO ORDERED.**

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11 DATED: February 6, 2008

12 
13 Honorable Barry Ted Moskowitz
United States District Judge

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